IN THE HIGH COURT OF BOMBAY AT GOA
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FIRST APPEAL NOS.24 OF 2003 & 89 OF 2003

FIRST APPEAL NO.24 OF 2003

1. Shri Vithal V. Gaitonde,

2. Smt. Vinitabai V. Gaitonde,
both r/o H.No.376, Aquem
Baixo, Shantinagar, Navelim,
Salcete, Goa 403 707. ... Appellants.

Versus

1. Special Land Acquisition
Officer, (S.I.P.) Gogol,
Margao, Goa, and

2. Executive Engineer,
Works Division X,
Irrigation Department,
Pajimol, Sanguem, Goa. ... Respondents.

Appellant no.1 in person.

Mr. Guru Shirodkar, Additional Government Advocate for the respondents.

FIRST APPEAL NO. 89 OF 2003

1. Special Land Acquisition
Officer (South Goa),
Selaulim Irrigation Project,
Gogol, Margao, Goa, and

2. Executive Engineer, Works
Division X, Irrigation Depart-
ment Pajimol, Sanguem, Goa. ... Appellants.

Versus

1. Shri Vithal V. Gaitonde, and

2. Smt. Venitabai V. Gaitonde,
both r/o H.No. 376, Aquem,
Bairo, Shantinagar, Navelim,
Salcete, Goa. ... Respondents.

Mr. Guru Shirodkar, Additional Government Advocate for the appellants.

Respondent no.1 in person.

CORAM : B. H MARLAPALLE, J.

DATE : 9th September, 2004.

ORAL JUDGMENT

These appeals arise from the Award passed by the learned Additional District Judge, South Goa, in Land Acquisition Case No.249/1993. By this Award dated 30th August, 2002, the learned Additional District Judge partly allowed the reference and fixed the rate of compensation in respect of the cashew garden land at Re.1/- per sq.mt. and also directed that the applicants be entitled for 30% solatium, but no additional compensation in terms of Section 23-A of the Land Acquisition Act, 1894 (for short "the Act").

2. The Government of Goa acquired an area of 2,97,57,000 sq. mts. of land located in nine different villages by publishing a Notification under Section 4 of the Act on 17th November, 1971. The Land Acquisition Officer passed the Award on 26th March, 1973. In the acquired land the present appellants lost about 26,550 sq. mts. of land and the categories of land so acquired from the appellants are as under:-

coconut land - 4,225 sq.mts.

barad land - 9,450 sq. mts.

cashew land - 7,900 sq. mts.

waste land – 4,900 sq. mts.

nallah land – 75 sq. mts.

3. One Mr. Narendra Nadkarni, whose land also was acquired by the Notification dated 17th November, 1971, and covered by the Award passed by the Land Acquisition Officer on 26th March, 1973, had filed an application for enhancement of the compensation under Section 18 of the Act and it came to be referred to the court below and registered as Land Acquisition Case No.387 of 1981. By his Award dated 12th October, 1990, the learned District Judge was pleased to enhance the compensation and fix the compensation at the following rates:-

i) barad land – Re.1/- per sq. mt.

ii) coconut land – Re.1/- per sq. mt.

iii) paddy land – Rs.4/- per sq. mt.

4. A number of land owners who had not otherwise moved an application under Section 18 of the Act thereafter approached the Special Land Acquisition Officer by filing an application under Section 28-A of the Act and the present appellants were one of such claimants. The Special Land

Acquisition Officer by his Award dated 17th August, 1992, fixed the compensation rates as per the Award dated 12th October, 1990 passed by the learned District Judge, but so far as the present appellants' case regarding barad land and cashew land is concerned, he fixed the compensation at Rs.0.75p. per sq mt. The appellants, therefore, received the Award amount under protest and moved an application under Section 28-A(3) of the Act, for a reference. It was accordingly referred and came to be registered as Land Acquisition Case No.249/93.

5. The Award dated 12th October, 1990, passed in Land Acquisition Case No.387 of 1981 by the learned District Judge had fixed the compensation at the rate of Re.1/- per sq. mt. for barad land, as well as coconut land, whereas for the paddy land the compensation was fixed at Rs.4/- per sq. mt. The appellants' claim as made in his application dated 21st June, 1992, was for Rs.6/- per sq. mt. for cashew land, barad land and waste land and Rs.4/- for the nullah land. Admittedly, the Award dated 12th October, 1990, had not granted such a rate and at the same time the Award dated 26th March, 1973, passed by the Special Land Acquisition Officer was not objected to by the appellants at any point of time before the learned District Judge passed his Award on 12th October, 1990. It appears that the appellants by filing an application under Section 28-A(3) of the Act desired the same to be treated as an application under Section 18 of the Act.

Their claim under Section 28-A(3) of the Act ought to have been limited only to the extent of the claim allowed by the learned District Judge in his Award dated 12th October, 1990, and no further enlargement was permissible. Nevertheless, in support of this claim the appellants sought to place on record two sale instances. The Court below has discarded both. One sale instance is of a land located beyond 7 kms. from the appellants' land and the other sale instance is also of land located at about 4 to 5 kms. Even otherwise, what was required to be examined was the benefit flowing from the Award dated 12th October, 1990, and not the full-fledged enquiry on the rates fixed by the Land Acquisition Officer in his Award dated 26th March, 1973 in respect of all types of lands. The courts below rightly enhanced the compensation to Re.1/- per sq. mt. in respect of the cashew land in favour of the appellants. As the Award passed by the Land Acquisition Officer was dated 26th March, 1973, the additional compensation in terms of Section 23-A of the Act was not payable to the appellants and the same has been rightly denied. Thus, the challenge to the impugned Award is devoid of merits and, therefore, this Appeal must fail.

6. The First Appeal No.89 of 2003 is by way of a cross appeal by the State Government. It has been contended that the rate of 0.75 p. per sq. mt. fixed by the Land Acquisition Officer in his fresh Award dated 17th August, 1992, was correct and there was no case made out for enhancing

the same. This Court in Writ Petition no.267/1996 considered the claim of a similarly situated claimant based on the Award passed in the reference made at the instance of Mr. Narendra Nadkarni and by Judgment dated 7th October, 1996, the Division Bench was pleased to fix the compensation at the rate of Re.1/- per sq. mt. of the cashew land. Hence, the challenge to the impugned Award in the cross objection must fail.

7. In the result, both the Appeasl stand dismissed. No costs.

B. H. MARLAPALLE, J.

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